

REMARKS/ARGUMENTS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested. By this amendment, claims 1, 9, 25, and 28 are amended, claim 27 is canceled, and claim 33 is added. Claims 12 -19 are withdrawn pending an election/restriction requirement. Claims 20 and 21 are allowed. Claims 1-21, 25, and 28-33 are pending in the application. Claim 30 is amended to place the claim in better form. Claim 30 is not amended to distinguish over the references cited in the Office Action.

Claim 25 is amended to overcome the rejection of claim 25 under 35 U.S.C. §112, second paragraph.

Applicant appreciates the indicated allowability of claims 9-11 if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claims 9-11 have been amended to include all of the limitations of the base claim and intervening claims. Therefore, claims 9-11 are allowable.

Claims 1, 2, 4-6, 8, and 31 stand rejected under 35 U.S.C. 102(b) as being anticipated by Moore et al. Claim 1 is amended to recite that the member has portions that deform prior to striking the end wall when the member moves in the first direction. Neither Moore et al. nor any of the other references cited in the Office Action discloses or suggests this structure. Therefore, claim 1 is allowable. Claims 2-6, 8, and 31, which depend on claim 1, are allowable as depending from an allowable claim and also for the specific limitations recited therein.

Claim 7, which depends from claim 1, should be allowable for the same reasons as claim 1 and also for the additional feature that the body of the fastener

comprises a metal housing and a plastic portion molded onto the housing. The metal housing forms a portion of the head and the plastic portion forms the shank and a portion of the head. Neither Moore et al. nor any of the other references cited in the Office Action discloses or suggests this feature and including all of the limitations of claim 1.

Further, contrary to that which is set forth in the Office Action, providing an actuatable fastener with a metal housing and a plastic portion molded onto the housing is more than merely selecting a suitable material. The present invention recognizes that the metal housing is suited to support combustion of the pyrotechnic material. The present invention also recognizes that machining the shank portion from metal would be time consuming and therefore costly because of the numerous steps involved in forming the different diameters of the first and second portions, the reversed threads of the portions, and the rupture joint between the portions. By molding the shank portion onto the housing with plastic, all of these features are formed simultaneously and thereby result in faster production and reduced costs. None of the references cited in the Office Action teach or suggest a combination a molded plastic shank portion and a metal housing portion. Therefore, the rejection of claim 7 under 35 U.S.C. 103 should be withdrawn and claim 7 should be allowed for this further reason.

Furthermore, in making a rejection based on 35 U.S.C. 103, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S.

1057 (1968). In the present case, the examiner has not adduced any evidence that having a plastic portion molded onto the metal housing was recognized by those of ordinary skill in the art at the time of appellant's invention. The known use of plastic does not necessarily provide any suggestion to have a plastic portion molded onto the housing. It appears that the examiner's rejection of claim 7 as being unpatentable over Moore et al. stems from impermissible hindsight rather than from any suggestion in the applied prior art to modify Moore et al. to arrive at the claimed invention recited in claim 7. Therefore, in view of the above-mentioned reasons, claim 7 is allowable.

Claims 12-19 are allowable and should no longer be withdrawn since they depend from an allowable generic or linking claim 1.

Claim 25 is amended to recite that the second portion is located closer to the head than the first portion and the first portion is moveable with the vent member. Claim 25 as amended defines over the references cited in the Office Action. Neither Elqadah et al. nor any of the other references cited in the Office Action discloses or suggests this feature. Therefore, claim 25 is allowable.

Claim 28 is amended to recite that the portion of the shank is moveable with the vent member. Claim 28 defines over the references cited in the Office Action. Neither Elqadah et al. nor any of the other references cited in the Office Action discloses or suggests this feature. Therefore, claim 28 is allowable.

New claim 33, which depends on claim 28, should be allowed for the same reasons as claim 28 and also for the feature that the member does not contact the end wall of the shank before the initiator is actuated. Neither Elqadah et al. nor any

of the other references cited in the Office Action discloses or suggests this feature.

Therefore, claim 33 is allowable.

Claim 29 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Damian et al. in view of Elqadah et al. This rejection is respectfully traversed.

The M.P.E.P. sets forth the criteria for a rejection for obviousness under 35 U.S.C. §103 as follows:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

See, M.P.E.P. § 706.02(j) *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The combination of Damian et al. in view of Elqadah et al. set forth in the Office Action fails to establish a prima facie case of obviousness for the following reasons.

The proposed combination of Damian et al. and Elqadah et al. does not teach or suggest all of the claim limitations of claim 29. Claim 29 recites that the tether has a first end fixed to the inflatable vehicle occupant protection device, a second end fixed to the housing, and that the shank is connectable with the tether at a point between the first and second end. Damian et al. and Elqadah et al. do not teach or suggest this structure. Damian et al. and Elqadah et al. do not teach or suggest a first end of a tether fixed to an inflatable vehicle occupant protection device. In

Damian et al. the mooring line 35 is secured at one end to the inflator 40 and at another end to a tether element 30 as depicted in Fig. 2A. Elqadah et al. does not disclose or suggest any tether. Thus, for this reason alone, the proposed combination of Damian et al. and Elqadah et al. fails to establish a *prima facie* case of obviousness under 35 U.S.C. 103.

Also, there is no suggestion or motivation to modify Damian et al. to use the actuatable fastener of Elqadah et al. There is nothing in Damian et al. or Elqadah et al., or in the knowledge of one of ordinary skill in the art to suggest combining the reference teachings of Damian et al. and Elqadah et al. as proposed in the rejection of claim 29. The Office Action states that it would be obvious to do so in order to control the fracturing precisely so that the tether is released at the desired moment to provide optimum protection for the occupant involved in the collision. This motivation is not, however, found in Damian et al. or Elqadah et al. Instead, this motivation is apparently supplied by the Examiner in hindsight. Thus, for this further reason, the proposed combination of Damian et al. and Elqadah et al. fails to establish a *prima facie* case of obviousness under 35 U.S.C. 103.

For the reasons set forth above, the teachings of the Damian et al. and Elqadah et al. references are not sufficient to render claim 29 *prima facie* obvious, and thus, claim 29 is allowable.

Claim 32 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Webber et al. in view of Elqadah et al. This rejection is respectfully traversed. The proposed modification of Webber et al. in view of Elqadah et al. fails to establish a *prima facie* case of obviousness for the following reasons.

The proposed combination of Webber et al. and Elqadah et al. does not teach or suggest all of the claim limitations of claim 32. Claim 32 recites that the actuatable fastener further comprises means for displacing the first portion the predetermined distance from the second portion to propel the vent member the predetermined distance from the closed position to the open position. The proposed combination does not teach or suggest this feature. Webber et al. teaches that a slide mechanism 210 is retained in a close position which covers the vent opening 206 by a pin 250. The slide mechanism 210 is allowed to move by simply removing the pin 250. Because the inflator gas contacts the beveled segment 220, the natural flow of the inflator gas causes the free slide mechanism 210 to be driven towards the end wall 230 of the housing 202 to open the vent opening 206. Elqadah et al. discloses that the first wall 120 of the nut portion 74 and the bolt portion 72 break off and move away from the back wall 24 of the housing 16. As seen in Fig.1, the first wall 120 of the nut portion 74 moves away from the door panel 52. The door panel 52 is thus released for movement away from the back wall 24 of the housing 16 to open the vent openings 32. Neither Elqadah et al. nor Webber et al. either alone or in combination disclose or suggest means for displacing a first portion of the shank the predetermined distance from the second portion to propel the vent member the predetermined distance from the closed position to the open position. Thus, for this reason alone, the proposed combination of Webber et al. and Elqadah et al. fails to establish a prima facie case of obviousness.

Also, there is no suggestion or motivation to modify Webber et al. to use the actuatable fastener 12 of Elqadah et al. There is nothing in Webber et al. or Elqadah et al., or in the knowledge of one of ordinary skill in the art to suggest combining the

reference teachings of Webber et al. and Elqadah et al. as proposed in the rejection of claim 32. The Office Action merely states that it would be obvious to do so in order to control the fracturing precisely so that the tether is released at the desired moment to provide optimum protection for the occupant involved in the collision. However, one of ordinary skilled in the art would recognize that there is no need to include the actuatable fastener of Elqadah et al. in the invention of Webber et al. in the manner taught by Elqadah et al.

Also, there is no suggestion or motivation to modify Webber et al. to use the actuatable fastener of Elqadah et al. There is nothing in Webber et al. or Elqadah et al., or in the knowledge of one of ordinary skill in the art to suggest combining the reference teachings of Webber et al. and Elqadah et al. as proposed in the rejection of claim 32. The Office Action states that it would be obvious to do so in order to control the fracturing precisely so that the tether is released at the desired moment to provide optimum protection for the occupant involved in the collision. This motivation is not, however, found in Webber et al. or Elqadah et al. Instead, this motivation is apparently supplied by the Examiner in hindsight. Thus, for this further reason, the proposed combination of Webber et al. and Elqadah et al. fails to establish a *prima facie* case of obviousness under 35 U.S.C. 103.

For the reasons set forth above, the teachings of the Webber et al. and Elqadah et al. references are not sufficient to render claim 32 *prima facie* obvious, and thus, claim 32 is allowable.

In view of the foregoing, it is respectfully submitted that the above-identified patent application is in condition for allowance, and allowance of the above-identified patent application is respectfully requested. Please charge any deficiency or credit

any overpayment in the fees for this amendment to our Deposit Account

No. 20-0090.

Respectfully submitted,



Matthew M. Shaheen  
Reg. No. 45,367

TAROLLI, SUNDHEIM, COVELL,  
& TUMMINO L.L.P.  
1300 East Ninth Street, Suite 1700  
Cleveland, Ohio 44114-1400  
Phone: (216) 621-2234  
Fax: (216) 621-4072  
Customer No.: 26,294